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2008 DEC -2 P 2: 28

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November 26, 2008

Thomasenia P. Duncan, General Counsel
Office of the General Counsel
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

BY U.S. Mail and Facsimile #(202) 219-3923

Re: MUR 6120, Republican Campaign Committee of New Mexico and John Chavez, as Treasurer

Dear Ms. Duncan:

This is the response of our clients, the Republican Party of New Mexico Republican Campaign Committee of New Mexico (the "RCCNM") and Matthew Kennicott, Executive Director, and John Chavez, Treasurer, (collectively, "Respondents") to the complaint in the above-captioned matter under review. For the reasons stated below, we respectfully request that the Federal Election Commission (the "Commission") find no reason to believe that any violations of the Federal Election Campaign Act of 1971, as amended. (the "Act" or "FECA") have occurred and close this file as soon as possible.

I. Introduction and Summary.

This complaint was filed on the eve of the general election for the United States House of Representatives in New Mexico's First Congressional District. Martin Heinrich, the Democratic candidate, eventually prevailed. Based on mere supposition, innuendo, and partisan zeal Complainant Brian S. Colon, Chairman of the Democratic Party of New Mexico ("Complainant"), for political purposes, alleged coordination between Respondents, Bernalillo County Sheriff Darren White, the Republican candidate for the First Congressional District ("Sheriff White"), and Freedom's Watch. As demonstrated below, this complaint was motivated by political gamesmanship as there is no legal or factual support for any of Complainant's allegations.

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II. Legal Discussion.

A. The Commission's Coordination Standard.

Under Commission regulations, a communication benefitting a federal candidate is a "coordinated communication," and must be treated as an in-kind contribution or a coordinated party expenditure, if: (1) it is paid for by someone other than the candidate or the candidate's committee; (2) it satisfies one of the "content" standards enumerated in the rule; and (3) it satisfies one of the rule's enumerated "conduct" standards. 11 C.F.R. § 109.21. The provision applies to broadcast, cable, or satellite communications and certain mass mailings and telephone banks. *Id.*; 11 C.F.R. § 100.26.

A communication can meet the "content" standard in numerous ways. For example, a communication that "expressly advocates" the election or defeat of a clearly identified federal candidate will meet the content standard, as will an ad that is an "electioneering communication" under the law. And an ad that does not expressly advocate for or against a candidate and is not an electioneering communication will nonetheless meet the content standard if it: a) refers to a clearly identified federal candidate; b) is publicly distributed within 120 days of an election; and c) is directed to voters in the identified candidate's jurisdiction. 11 C.F.R. § 109.21.

Similarly, a communication can meet the "conduct" standard in numerous ways. An ad that is created, produced, or distributed at the request or suggestion of a candidate or authorized committee will qualify, as will one in which a candidate or authorized committee is "materially involved" with respect to certain decisions regarding the dissemination of the ad, such as its content or timing. An ad will also meet the conduct standard if the benefitting candidate or authorized committee and the payor engage in "substantial discussions" about the candidate's or authorized committee's campaign plans, projects, activities, or needs. In addition, an ad will also meet the conduct standard if the benefitting candidate or authorized committee and the payor share a common vendor who conveys information about the candidate's or authorized committee's campaign plans, projects, activities, or needs. Finally, an ad will meet the conduct standard if it is paid for by a former employee or independent contractor of the benefitting candidate or authorized committee.

B. The RCCNM's Independent Expenditure Program.

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The RCCNM carefully designed and implemented a program for the broadcast of independent expenditures in accordance with the Commission's "coordination" standards explained above. RCCNM hired an independent consultant, Ben Burger of Stevens, Reed, Curcio and Potholm, to run the program as an entity wholly separate from the RCCNM. *See Declaration of Ben Burger, attached as Exhibit A.* Entirely independent of the RCCNM and its staff, Mr. Burger supervised and executed all creative and strategic aspects of the independent expenditure program. Mr. Burger hired his own staff, designed the ads, hired and supervised the media consultants who bought the time and filmed the ads, and supervised the selection of the stations on which each ad would run and the times each would be broadcast. *See id.*

In addition, to ensure the ads were not "coordinated communications" under the Commission's rule, RCCNM implemented a series of internal and external controls to prevent the ads from meeting the "conduct" standard explained above. The primary purpose of these controls was to build an effective firewall, thereby ensuring that strategic information from the benefiting candidate's campaign was not conveyed, either directly from the campaign, or indirectly through the RCCNM, to Mr. Burger or to his staff or agents.

Pursuant to this firewall, Mr. Burger and his staff were strictly prohibited from contacting or receiving information not publicly available from any of the benefiting campaigns or their agents about any aspect of the candidate's campaign strategy or political advertising. *See id.* These restrictions extended to the agents of any state parties or outside groups, such as the Republican Party of New Mexico or Freedom's Watch. The RCCNM also restricted communication between Mr. Burger and RCCNM staff who could have had any contact with any political candidate or campaign. *See id.* Only RCCNM's Legal Counsel was authorized to contact Mr. Burger, and these contacts were expressly limited to ensuring compliance with all applicable laws, regulations and rules. *See id.*

C. Respondents' Actions Did Not Violate the Conduct Standards For Coordinated Communications, And Complainant Has Provided No Evidence to the Contrary.

Complainant alleges that the RCCNM made an illegal in-kind contribution to Sheriff White's campaign based solely upon the fact that Sheriff White

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serves on the executive committee of the New Mexico Republican Party. Based entirely upon this fact, the Complaint makes the unsupported and unsupportable assertion that "it is implausible that the New Mexico Republican Party's federal political committee, RCCNM, could have made the decision to air "Can't Trust" without the assent or material involvement of, or substantial discussion with, White or one of his agents." As detailed above, RCCNM carefully designed and implemented a program for the broadcast of independent expenditures in accordance with the Commission's "conduct" standards. By implementing this effective firewall, RCCNM ensured there was no coordination between the RCCNM and Sheriff White, his agents or his campaign.

The Complaint also alleges that Freedom's Watch's advertisement, "Asked to Explain," was coordinated with the RCCNM because the organizations employed the same vendor, Stevens, Reed, Curcio & Potholm, to produce television advertisements during the race for New Mexico's First Congressional District seat and because advertisements purchased by Freedom's Watch and the Committee used "identical images" of Martin Heinrich. Again, as detailed above, RCCNM created an effective firewall between RCCNM and the independent consultant, Mr. Burger, to ensure that no coordination took place. In addition, both Mr. Burger and RCCNM expressly denied that there was any information-sharing between RCCNM and Freedom's Watch. See Exhibit A, ¶ 8,9; see also Declaration of Matthew Kennicott, ¶ 7, attached as Exhibit B. Finally, the fact that advertisements of Freedom's Watch and RCCNM used an identical image of Mr. Heinrich provides no evidence of wrongdoing since the image was obtained from a publicly available source. See 11 C.F.R. § 109.21(d)(4)(iii). Accordingly, there is no evidence that Respondents coordinated with Freedom's Watch.

Finally, based on the false assumption that there were coordinated communications between Sheriff White, Freedom's Watch and the RCCNM, Complainant asserts that RCCNM failed to report the coordinated communication pursuant to 11 C.F.R. § 109.21(b)(3). As explained above, there is no evidence of any coordination between RCCNM, Sheriff White, and Freedom's Watch. Therefore, Respondents did not violate any reporting requirements since there was simply nothing to report.

III. Conclusion.

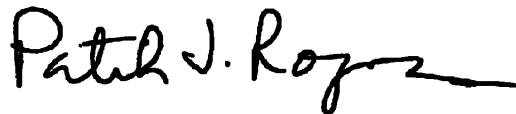
For the reasons stated above, there is no evidence or other information to conclude that there was any coordination between Respondents, Sheriff White,

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and Freedom's Watch. None of the conduct standards promulgated by the Commission and required to establish coordination have come close to being satisfied. To the contrary, the evidence clearly demonstrates that the RCCNM implemented effective safeguards to ensure compliance with all applicable laws, regulations and rules. Accordingly, we respectfully request that the Commission find no reason to believe that Respondents have violated any provision of the Act or the Commission's regulations and, further, close this file as soon as possible.

Please do not hesitate to contact me if you would like to discuss this matter further.

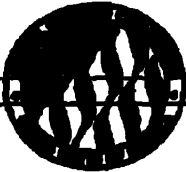
Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Roy", followed by a horizontal flourish.

cc: Jeff S. Jordan, Supervisory Attorney

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2008 DEC -2 P 2:29



FEDERAL ELECTION COMMISSION

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STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Client
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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

11/26/2008
Date

[Signature]
Respondent/ Client Signature

Agent & Formerly Executive
Title Director of
RPM

RESPONDENT/CLIENT Republican Party of New Mexico/ Republican Campaign
(Please Print) Committee of New Mexico

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Information is being sought as part of an investigation being conducted by the Federal Election
Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(1)(A) apply. This section
prohibits making public any investigation conducted by the Federal Election Commission without
the express written consent of the person under investigation

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